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REMARKS

35 U.S.C. § 101 REJECTIONS

The Examiner rejected claims 30 and 31 under 35 U.S.C. § 101 "because the claimed invention is directed toward non-statutory subject matter." *Final Office Action*, 2. Specifically, the Examiner contended that the previously recited 'computer readable medium' "is a form of energy and not a composition of matter." *Final Office Action*, 3. The Examiner suggested that the Applicants amend claims 30 and 31 to recite a 'computer readable storage medium.' See *Final Office Action*, 3. The Applicants appreciate the Examiner's suggestion and have amended claims 30 and 31 as suggested. As such, the Applicants believe that the Examiner's rejection is overcome.

35 U.S.C. § 103(A) REJECTIONS

Claim 1 has been amended to generally recite the elements of previously pending claim 3. Claim 3 recited 'wherein the machine classifier [of claim 1] is a reliable classifier having a probability of erroneous classification of less than approximately one percent.' Claim 1 now recites, *inter alia*, that:

> testing a message with a machine classifier, wherein the machine classifier is capable of making a classification of the message and the machine classifier is a reliable classifier having a probability of erroneous classification of less than one percent; and

The Examiner rejected previously pending claim 3 as being obvious per U.S. patent publication number 2003/0204569 to *Andrews et al.* in light of U.S. patent publication number 2005/0015626 to *Chasin*. See *Final Office Action*, 5. The Applicants respectfully traverse.

The Examiner contends that the *Chasin* reference discloses the 'less than 1%' element as found in currently amended claim 1. Specifically, the Examiner cited that portion of *Chasin* that states "the confidence ratio used for classifying a message as spam or junk can be increased to a relatively high value, *e.g.*, approaching 100 percent." *Chain*, [0011]. **Approaching** a 'relatively high value' even if that high value is 100% is **not equivalent** to 'less than approximately one percent' as previously recited in claim 3 **nor is it equivalent** to 'less than 1 percent' as et forth in amended claim 1.

Chasin lacks the specific teachings as presently set forth in the Applicants' amended claim 1. Per *Chasin*, the high value--while *approaching* 100 percent—could be (*i.e.*, the confidence ratio *is*) 80% (which would constitute an erroneous classification probability of 20%) or 90% (which would constitute an erroneous classification probability of 10%). In both cases, the high value would be **greater than** 1 and would not meet the specific recitation set forth in amended claim 1.

There is no indication in *Chasin* that the erroneous classification probability *is* less than 1% and to suggest the same would be an unsupported extrapolation of the purported teachings of *Chasin*. See *In re Rijckaert*, 9 F.3d 1531, 1534 (Fed. Cir. 1993) (finding that the fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic); see also *In re Robertson*, 169 F.3d 743, 745 (stating that "[t]o establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is **necessarily present** in the thing described in the reference" as "[i]nherency . . . may not be established by probabilities or possibilities") (emphasis added).

Andrews et al. also fails to disclose an erroneous classification probability much less one that is less than 1% per the Applicants' amended claim 1. As this particular claim element is not found in *Chasin* or *Andrews et al.*—either individually or in combination—the Examiner has failed to evidence a *prima facie* case of obviousness and the 35 U.S.C. § 103(a) rejection is overcome. See MPEP § 2142. Independent claims 20, 28, 29, 30, and 31 have all been amended in a similar fashion with respect to the aforementioned 'less than 1%' element and are allowable for reasons similar to those as set forth in the context of claim 1.

The Applicants have also amended claims 23 and 24 into independent form by incorporating each and every element of the independent claim from which they previously were dependent. Newly independent claims 23 and 24 also recite the aforementioned element of 'erroneously classification probability of less than 1%.' As such, newly independent claims 23 and 24 are also allowable in light of *Chasin* and *Andrews et al.*—either together or in combination.

CONCLUSIONS

The Examiner's rejections of independent claims 30 and 31 are overcome in that the claimed invention specifically recites statutory subject matter.

The Examiner's obviousness rejection of claims 1, 20, and 28-31 are overcome in that the presently cited references—either alone or in combination—fail to disclose an erroneous probability rate of less than 1% Newly independent claims 23 and 24 are allowable for the same reason.

Notwithstanding the finality of the present action, the present amendments do not necessitate a new search in that the less than 1% claim element was previously examined with respect to, at least, previously pending claim 3.

The Applicants respectfully request the passage of the present application to allowance. The Examiner is invited to contact the Applicants' undersigned representative with any questions concerning this matter.

Respectfully submitted,
Jonathan J. Oliver et al.

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By: Kenneth M. Kaslow

Kenneth M. Kaslow, Reg. No. 32,246
CARR & FERRELL *LLP*
2200 Geng Road
Palo Alto, CA 94303
T: 650.812.3400
F: 650.812.3444